

## CALIFORNIA CODE OF REGULATIONS

### Title 10, Chapter 5, Subchapter 3, Article 11.2 Separate Account or Accounts – Modified Guaranteed Annuities

#### **§2534.27. Filing and Approval of Policy Forms.**

All modified guaranteed annuity policy forms (the term "policy forms" as used in this Section means any individual policy delivered or issued for delivery in this State and any document attached to and made a part of such policy, and any group policy delivered or issued for delivery in this state and any document attached to and made a part of such group policy and any group certificate delivered pursuant to the provisions of such group policy), including contracts providing fixed dollar benefits as may be included in the operation of any separate account shall be submitted to the Commissioner prior to delivery or issuance for delivery in this State, and no such form shall be delivered or issued for delivery in this State until the use of such form has been approved in writing by the Commissioner. Filings shall include a demonstration in a form satisfactory to the Commissioner that the nonforfeiture provisions of the contracts comply with Section 2534.28(b), as well as a certification by a member of the American Academy of Actuaries as to the compliance with Section 2534.28(b).

The Commissioner may disapprove any policy form which is unfair, unreasonable, or otherwise inconsistent with the provisions of the California Insurance Code. The fees for such approval shall be the fees set forth in California Code of Regulations, Title 10, Chapter 5, Subchapter 2, Section 2202(a)(10). The provisions of California Insurance Code Section 12957 shall be applicable to modified guaranteed annuity forms.

Note: Authority cited: Sections 10506(h), ~~and~~ 10506.3(a), 12921(a) and 12926, Insurance Code.  
Reference: Sections 10506(h), 10506.3(a), and 12957, Insurance Code.

#### **§2534.28. Modified Guaranteed Annuity Contract Requirements.**

##### **(a) Mandatory Contract Benefit and Design Requirements.**

(1) Any modified guaranteed annuity contract delivered or issued in this state shall contain a statement of the essential features of the procedures to be followed by the insurance company in determining the dollar amount of nonforfeiture benefits.

(2) No modified guaranteed annuity contract calling for the payment of periodic stipulated payments shall be delivered or issued for delivery in this state unless it contains in substance the following provisions:

(A) A provision that there shall be a grace period of thirty (30) days or of one month during which the contract shall remain in force and, within which any payment due to the insurer other than the first may be made. The contract may include a statement of the basis for determining the date as of which any such payment received during the grace period shall be applied to produce the values under the contract;

(B) A provision that, at any time within one year from the date of default, the contract may be reinstated upon payment to the insurer of such overdue payments as required by contract, and of all indebtedness to the insurer on the contract, including interest. Reinstatement may not occur if the cash value has been

paid. The contract may include a statement of the basis for determining the date as of which the amount to cover such overdue payments and indebtedness shall be applied to produce the values under the contract;

(C) A provision that, except and to the extent set out in contracts, the portion of the assets of any separate account which equal the reserves and other contract liabilities of the account shall not be chargeable with liabilities arising out of any other business of the company;

(3) The market-value adjustment formula, used in determining nonforfeiture benefits, must be stated in the contract and must be applicable for both upward and downward adjustments. When a contract is filed, it must be accompanied by an actuarial statement indicating the basis for the market-value adjustment formula and that the formula provides reasonable equity to both the contract holder and the insurance company.

(b) Nonforfeiture Benefits.

(1) This section shall not apply to any of the following:

(A) Reinsurance;

(B) Group annuity contracts purchased in connection with one or more retirement plans or deferred compensation plans established or maintained by or for one or more employers (including partnerships or sole proprietorships), employee organizations, or any combinations thereof, other than plans providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code;

(C) Premium deposit fund;

(D) Investment annuity;

(E) Immediate annuity;

(F) Deferred annuity contract after annuity payments have commenced;

(G) Reversionary annuity; or

(H) Any contract which is to be delivered outside this state by an agent or other representative of the company issuing the contract.

(2) No modified guaranteed annuity contract shall be delivered or issued for delivery in this state unless it contains in substance the following provisions:

(A) When premium payments cease under a contract, the insurer will grant a paid-up annuity benefit on a plan described in the contract that complies with Paragraph (5) below. The provision will include a statement of the mortality table, if any, and guaranteed or assumed interest rates used in calculating annuity payments.

(B) If a contract provides for a lump sum settlement at maturity, or at any other time, upon surrender of the contract at or prior to the commencement of any annuity payments, the insurer will pay, in lieu of any paid-up annuity benefit, a cash surrender benefit as described in the contract that complies with Paragraph ~~(6)~~ (8) below. ~~The contract may provide that the insurer may defer payment of such cash surrender benefit for a period of six months after demand.~~ The company may reserve the right to defer the payment of the

cash surrender benefit for a period not to exceed six (6) months after demand therefor with surrender of the contract after making written request and receiving written approval of the commissioner. The request shall address the necessity and equitability to all policyholders of the deferral.

(3) The minimum values, as specified in this section, of any paid-up annuity, cash surrender or death benefits available under a modified guaranteed annuity contract shall be based upon nonforfeiture amounts meeting the requirements of this paragraph. In addition, pursuant to Insurance Code section 10506.3(a), the provisions of Insurance Code Article 3B (commencing with section 10168) of Chapter 1 of Part 2 of Division 2 with regard to nonforfeiture values shall apply to the Unadjusted Minimum Nonforfeiture Amount, as an absolute minimum. The Unadjusted Minimum Nonforfeiture Amount on any date prior to the annuity commencement date shall be an amount equal to the ~~percentages of~~ net considerations (as specified in Paragraph ~~(4)~~ (6) below) increased by the interest credits as defined in Section ~~2534.22(d)~~ 2534.21 of these regulations allocated to the ~~percentage of~~ net considerations, which amount shall be reduced to reflect the effect of Subparagraphs (A), (B), (C), and (D) below:

~~(A) Any partial withdrawals from or partial surrender of the contract;~~

~~(B) The amount of any indebtedness on the contract, including interest due and accrued;~~

~~(C) An annual contract charge equal to the lesser of:~~

~~(i) Thirty dollars (\$30.00) or;~~

~~(ii) Two percent (2%) of the end of year contract value less the amount of any annual contract charge deducted from any gross considerations credited to the contract during such contract year; and;~~

~~(D) A transaction charge of ten dollars (\$10.00) for each transfer to another investment division within the same contract.~~

(A) Any prior withdrawals from or partial surrenders of the contract increased by the interest credits defined in Section 2534.21;

(B) An annual contract charge of \$50, increased by the interest credits defined in Section 2534.21;

(C) Any premium tax paid by the company for the contract, increased by the interest credits defined in Section 2534.21. The premium tax credit is only permitted if the tax is actually paid by the company. If the tax is paid and subsequently credited back to the company, such as upon early termination of the contract, the tax credit may not be taken; and

(D) The amount of any indebtedness to the company on the contract, including interest due and accrued.

(4) Guaranteed interest credits in each year for any period of time for which interest credits are guaranteed shall be reasonably related to the average guaranteed interest credits over that period of time.

(5) The Minimum Nonforfeiture Amount shall be the Unadjusted Minimum Nonforfeiture Amount adjusted by the market-value adjustment formula contained in the contract.

(4) The percentages of net considerations used to define the Minimum Nonforfeiture Amount in Paragraph (3) above shall meet the requirements of subparagraphs (A) and (B) below:

~~(A) With respect to contracts providing for periodic considerations, the net considerations for a given contract year used to define the Minimum Nonforfeiture Amount shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of thirty dollars (\$30.00) and less a collection charge of one dollar and twenty-five cents (\$1.25) per consideration credited to the contract during that contract year and less any charges for premium taxes. The percentages of net considerations shall be sixty-five percent (65%) for the first contract year and eighty-seven and one-half percent (87 1/2%) for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be sixty-five percent (65%) of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was sixty-five (65%).~~

~~(B) With respect to contracts providing for a single consideration, the net consideration used to define the Minimum Nonforfeiture Amount shall be the gross consideration less a contract charge of seventy-five dollars (\$75.00) and less any charge for premium taxes. The percentage of the net consideration shall be ninety percent (90%).~~

(6) The net considerations for a given contract year used to define the minimum nonforfeiture amount in subsection 2534.28 (b)(3) shall be an amount equal to eighty-seven and one-half percent (87.5%) of the gross considerations credited to the contract during that contract year.

~~(5)~~ (7) Any paid-up annuity benefit available under a modified guaranteed annuity contract shall be such that its present value on the annuity commencement date is at least equal to the Minimum Nonforfeiture Amount on that date. Such present value shall be computed using the mortality table, if any, and the guaranteed or assumed interest rates used in calculating the annuity payments.

~~(6)~~ (8) For modified guaranteed annuity contracts which provide cash surrender benefits, the cash surrender benefit at any time prior to the annuity commencement date shall not be less ~~that~~ than the Minimum Nonforfeiture Amount next computed after the request for surrender is received by the insurer. The death benefit under such contracts shall be at least equal to the cash surrender benefit.

~~(7)~~ (9) Any modified guaranteed annuity contract which does not provide cash surrender benefits, or does not provide death benefits at least equal to the Minimum Nonforfeiture Amount, prior to the annuity commencement date shall include a statement in a prominent place in the contract that such benefits are not provided.

~~(8)~~ (10) Notwithstanding the requirements of this section, a modified guaranteed annuity contract may provide under the situations specified in Subparagraphs (A) or (B) below that the insurer, at its option, may cancel the annuity and pay the contract holder the larger of the Unadjusted Minimum Nonforfeiture Amount and the Minimum Nonforfeiture Amount, and by such payment be released of any further obligation under the contract:

(A) If, at the time the annuity becomes payable, the larger of the Unadjusted Minimum Nonforfeiture Amount and the Minimum Nonforfeiture Amount is less than \$2,000, or would provide an income the initial amount of which is less than \$20 per month; or

(B) If, prior to the time the annuity becomes payable under a periodic payment contract no considerations have been received under the contract for a period of two (2) full years and both:

(i) The total considerations paid prior to such period, reduced to reflect any partial withdrawals from or partial surrenders of the contract, and

(ii) The larger of the Unadjusted Minimum Nonforfeiture Amount and the Minimum Nonforfeiture Amount is less than \$2,000.

~~(9)~~ (11) For any modified guaranteed annuity contract which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of Subparagraph 2534.28(b) additional benefits are payable under the following conditions:

(A) In the event of total and permanent disability,

(B) As reversionary annuity or deferred reversionary annuity benefits, or

(C) As other policy benefits additional to life insurance, endowment, and annuity benefits, and considerations for all such additional benefits shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits that may be required by this section. The inclusion of such additional benefits shall not be required in any paid-up benefits, unless the additional benefits separately would require Minimum Nonforfeiture Amounts, paid-up annuity, cash surrender and death benefits.

~~(10) The annual contract charge of thirty dollars (\$30.00), the collection charge of one dollar and twenty five cents (\$1.25) per collection, the transaction charge of ten dollars (\$10.00) and the single consideration contract charge of seventy five dollars (\$75.00) referred to above, will be adjusted to reflect changes in the Consumer Price Index as follows: these contract charges shall be multiplied by the ratio of the Consumer Price Index for June of the calendar year preceding the date of filing, to the Consumer Price Index for June 1991. As used here, the Consumer Price Index means such Index for all urban consumers for all items as published by the Bureau of Labor Statistics of the United States Department of Labor or any successor agency. If the publication of the Consumer Price Index ceases, or if such index otherwise becomes unavailable or is altered in such a way to be unusable, the Commissioner will substitute an Index which the Commissioner deems to be suitable.~~

(c) The Application. The application for a modified guaranteed annuity shall prominently set forth language substantially stating that amounts payable under the contract are subject to a market-value adjustment prior to a date or dates specified in the contract. The statement shall be placed immediately above the signature line.

Note: Authority cited: Sections 10506(h), ~~and~~ 10506.3(a), 12921(a) and 12926, Insurance Code.  
Reference: Sections 10506(h) and 10506.3(a), Insurance Code.